

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ADRIENNE F.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. 2:19-cv-01640-BAT

**ORDER REVERSING THE
COMMISSIONER'S DECISION AND
REMANDING FOR FURTHER
ADMINISTRATIVE PROCEEDINGS**

Plaintiff appeals the denial of her application for Supplemental Security Income and Disability Insurance Benefits, contending the ALJ erred in evaluating her testimony and the medical opinion evidence, and requests remand for an award of benefits. Dkt. 11. The Commissioner concedes the ALJ erred but argues the case should be remanded for further administrative proceedings. Dkt. 12. As discussed below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

BACKGROUND

Plaintiff is 40 years old, has a high school education, and has worked as a home healthcare attendant and a child care worker. Tr. 1286. She alleges disability as of January 26, 2014. Tr. 1252. Her applications were denied initially, on reconsideration, and in a 2016 ALJ

1 decision. Tr. 1252. On appeal to this court, the case was remanded for reconsideration of
 2 Plaintiff's testimony and two medical opinions. Tr. 1356-66. On remand, after conducting a
 3 hearing in April 2019, the ALJ issued a decision in June 2019 finding Plaintiff not disabled. Tr.
 4 1278-1325, 1252-70.

5 **DISCUSSION**

6 **A. Plaintiff's Testimony**

7 The ALJ could only discount Plaintiff's testimony as to symptom severity for "specific,
 8 clear, and convincing" reasons supported by substantial evidence. *Trevizo v. Berryhill*, 871 F.3d
 9 664, 678 (9th Cir. 2017). Lack of corroborating medical evidence can be considered, but is not
 10 itself sufficient to discount a claimant's testimony. *Burch v. Barnhart*, 400 F.3d 676, 681 (9th
 11 Cir. 2005) ("Although lack of medical evidence cannot form the sole basis for discounting pain
 12 testimony, it is a factor that the ALJ can consider in his credibility analysis.").

13 **1. Digestive System Impairment**

14 Plaintiff contends, and the Commissioner concedes, the ALJ erred by failing to address
 15 Plaintiff's testimony of limitations caused by her digestive impairment. *See* Dkt. 12 at 2. On
 16 remand, as ordered by the court in the prior appeal, "the ALJ shall explicitly discuss the
 17 Plaintiff's allegations of limitations caused by her digestive disorder and either credit them or
 18 provide legally sufficient reasons to discount them." Tr. 1360.

19 **2. Pain**

20 The ALJ discounted Plaintiff's pain testimony because her pain improved with treatment.
 21 Tr. 1260-61. Evidence showing treatment returns a claimant to a level of function consistent
 22 with work or close to the level prior to impairments can undermine a claim of disability.
 23 *Wellington v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017). But the evidence the ALJ cited fails

1 to show such improvement. The ALJ cited a September 2014 treatment note reporting “Humira
2 had not improved her joint pain” although other pain decreased with prednisone. Tr. 637, 641.
3 The Commissioner cites a treatment note showing Plaintiff believed Humira helped her joint
4 pain somewhat because “her joint pains were worse when she was off of it for a period.” Tr.
5 1163. This note establishes Plaintiff continued to have joint pain when on Humira. The
6 Commissioner also cites a record, from a February 2016 visit to the emergency department for
7 worsening suicidal ideation, showing “[n]o joint pain.” Tr. 871. Because the visit was focused
8 on mental health, and because the record is replete with reports of joint pain, this is not
9 substantial evidence to support the ALJ’s finding of improvement with treatment. *See, e.g.*, Tr.
10 653, 821. Substantial evidence does not show Plaintiff’s pain improved to a level where she
11 could work or otherwise contradicted her testimony. The ALJ accordingly erred in discounting
12 Plaintiff’s pain testimony.

13 **3. Mental Impairments**

14 The ALJ discounted Plaintiff’s claims of mental impairments based on inconsistency
15 with the medical evidence and her activities. Tr. 1259-63.

16 **a) Medical Evidence**

17 The ALJ found Plaintiff improved with treatment compliance but sometimes failed to
18 follow treatment recommendations, and exacerbations of her impairments were due to drug use.
19 Tr. 1259-62.

20 Some improvement does not equate to complete restoration of function, and ““doing well
21 for the purposes of a treatment program has no necessary relation to a claimant’s ability to work
22 or to her work-related functional capacity.”” *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir.
23 2014) (quoting *Hutsell v. Massanari*, 259 F.3d 707, 712 (8th Cir. 2001)). This applies to

1 Plaintiff's reports of "doing well" in group therapy. *See, e.g.*, Tr. 1613, 1677. Further other
2 evidence the ALJ cited fails to show Plaintiff improved to a degree enabling work or
3 contradicting her testimony. For example, a June 2014 treatment note indicated "improved"
4 mood and affect in the last three sessions, but did not indicate the degree of improvement. Tr.
5 393. A February 2016 note mentioned Plaintiff's mood was "improved" to an unspecified
6 degree but remained "anxious and depressed," and reports abnormalities in Plaintiff's
7 appearance, behavior, speech, affect, and thought process. Tr. 911. In a December 2014
8 treatment note Plaintiff reported no mania or suicidal ideation, acceptable sleep, but still "[s]ome
9 breakthrough anxiety." Tr. 616. None of these contradict Plaintiff's testimony or show she can
10 work. The ALJ erred by discounting Plaintiff's mental health testimony based on improvement
11 with treatment.

12 An "unexplained or inadequately explained failure" to seek treatment or follow
13 prescribed treatment can be a valid reason to discount a claimant's testimony, but an ALJ must
14 consider a claimant's proffered reasons. *Trevizo*, 871 F.3d at 679-80. Plaintiff cancelled therapy
15 appointments due to illness or extreme pain and sometimes had difficulty with self-care,
16 including taking medications and remembering appointments. Tr. 581, 590, 585, 583, 586. The
17 ALJ did not address these proffered explanations for missing appointments and thus erred in
18 discounting Plaintiff's testimony based on failure to follow treatment recommendations.

19 The ALJ noted Plaintiff was hospitalized twice for mental impairments, and found drug
20 use responsible for the second one. Tr. 1259, 1260-61. This finding is not supported by
21 substantial evidence. The record shows Plaintiff's mental health was deteriorating for two weeks
22 before hospitalization, and drug use only occurred in the second week. Tr. 870. Moreover, drug
23

1 use does not appear to account for the first hospitalization. Drug use was not a clear and
2 convincing reason to discount Plaintiff's testimony.

3 **b) Activities**

4 The ALJ found Plaintiff's ability to create "feather mobiles" her therapist described as
5 "beautiful works of art" and to "contemplate selling them" indicated "a level of forethought and
6 attention" inconsistent with her testimony. Tr. 1261 (citing Tr. 1013). In the prior appeal, the
7 court found "[g]iven that Plaintiff suggested that her creativity was tied to her mania ([Tr.] 993),
8 it is not reasonable to assume that this activity demonstrated, as the ALJ found, that she could
9 sufficiently plan ahead and maintain attention." Tr. 1362. Nothing in the ALJ's current decision
10 supports finding creation of feather mobiles resulted from forethought and attention rather than
11 creative mania. As for sales, Plaintiff's therapist asked if Plaintiff had considered selling them,
12 and Plaintiff replied she had. Tr. 1013. The record reveals no subsequent action or plan of any
13 kind to sell the mobiles. That it occurred to Plaintiff to sell her works of art is not substantial
14 evidence of forethought or sustained attention.

15 Other activities the ALJ cited were self-care and basic activities of daily living "albeit
16 with reminders and occasional breaks." Tr. 1262. Requiring reminders to accomplish basic self-
17 care does not contradict Plaintiff's testimony. The ALJ cited a treatment note reporting Plaintiff
18 stated she and her mother "each have [a] sewing machine desk in the living room, [and] each
19 have an art table. [I]t's an amazing way to live." Tr. 1703. The ALJ found this was evidence
20 Plaintiff could "take part in a relatively normal daily or weekly routine." Tr. 1263. Nothing in
21 the treatment note shows Plaintiff engaged in a routine. Finally, the ALJ found Plaintiff
22 regularly appearing "neatly groomed" at therapy contradicted her testimony "she often does not
23 shower due to an aversion to water." Tr. 1262. Plaintiff testified at the 2016 hearing she

1 showers “every three days” or weekly if she is “struggling mentally” due to her phobia of water.
2 Tr. 63. Whether or not showering once or twice a week qualifies as “often,” it is not
3 incompatible with being neatly groomed. Inconsistency with Plaintiff’s activities was not a clear
4 and convincing reason to discount her testimony.

5 The ALJ erred by discounting Plaintiff’s mental symptom testimony without a clear and
6 convincing reason.

7 **B. Medical Opinions**

8 An ALJ may only reject the contradicted opinion of a treating or examining doctor by
9 giving “specific and legitimate” reasons. *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017).

10 **1. Margaret Bone, M.D.**

11 Treating doctor Margaret Bone, M.D. opined in March 2014 Plaintiff had marked
12 limitations in several basic work activities such as maintaining punctual attendance, adapting to
13 changes, and completing a normal workday and workweek. Tr. 757. The ALJ gave the opined
14 marked limitations little weight because they were out of proportion to mental status examination
15 results, medication improved Plaintiff’s symptoms, and Dr. Bone’s treatment notes were a
16 “rehash” of Plaintiff’s self-reports. Tr. 1264-65. None of these constitute specific and legitimate
17 reasons supported by substantial evidence.

18 Substantial evidence does not support the ALJ’s finding mental status examinations were
19 largely normal. Dr. Bone’s mental status examination documented abnormalities in speech,
20 attitude and behavior, mood, affect, memory, and concentration. Tr. 758. Several other mental
21 status examinations the ALJ cited also reveal abnormalities. *See, e.g.*, Tr. 360 (abnormalities in
22 attitude, appearance, affect, mood, suicidal ideation, and judgment).

1 The ALJ cited a notation Plaintiff's bipolar disorder was "stable," which does not
2 indicate her symptoms improved to a level where she could work or otherwise contradict Dr.
3 Bone's opinions.

4 Substantial evidence does not support the ALJ's finding Dr. Bone's treatment notes
5 largely regurgitated Plaintiff's self-reports. While the notes document Plaintiff's self-reports,
6 they also document extensive objective observations of appearance, eye contact, mood, affect,
7 speech, thought process, and thought content, as well as Dr. Bone's assessments. Tr. 554-56.

8 The ALJ erred by discounting Dr. Bone's treatment notes without a specific and
9 legitimate reasons.

10 **2. David Mashburn, Ph.D.**

11 Dr. Mashburn examined Plaintiff in 2017 and 2019, both times opining marked
12 limitations in several basic work activities. Tr. 1832, 1825. The ALJ did not address the 2017
13 opinion and gave the 2019 opinion little weight as inconsistent with the overall evidence and
14 based on Plaintiff's self-reports. Tr. 1265. These were not specific and legitimate reasons
15 supported by substantial evidence. The overall evidence is replete with abnormal mental status
16 findings. And Dr. Mashburn conducted a professional clinical interview and mental status
17 examination documenting abnormalities in affect, thought process and content, orientation,
18 memory, fund of knowledge, and concentration. Tr. 1833-34, 1826-27.

19 The ALJ also found some of Plaintiff's responses during the mental status examinations
20 "simply suggest poor education (e.g., poor serial #s)." Tr. 1265. But the ALJ found Plaintiff had
21 at least a high school education, and inferring her high school education did not encompass how
22 to subtract three is not reasonable. Tr. 1268; Tr. 1834 (Dr. Mashburn found "very poor serial
23 3's"); *see Batson v. Comm'r, Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004) ("[T]he

1 Commissioner’s findings are upheld if supported by inferences reasonably drawn from the
2 record.”).

3 The ALJ erred by failing to address Dr. Mashburn’s 2017 opinion and discounting his
4 2019 opinion without a specific and legitimate reason supported by substantial evidence. *See*
5 *Garrison*, 759 F.3d at 1012 (“Where an ALJ does not explicitly reject a medical opinion ..., he
6 errs.”).

7 **3. Lynne Munoz, ARNP**

8 Treating provider Ms. Munoz provided several reports opining Plaintiff was unable to
9 work. The ALJ could only reject Ms. Munoz’s opinions by providing a germane reason.
10 *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014). The ALJ discounted all these opinions
11 as inconsistent with contemporaneous medical records. Tr. 1265-67.

12 In 2016 Ms. Munoz opined marked limitations in several basic mental work activities.
13 Tr. 1233-34. The ALJ found this inconsistent with the most recent mental status examination
14 findings being “within normal limits.” Tr. 1265. But the examination actually shows
15 abnormalities in affect, mood, and suicidal ideation. Tr. 1095. The ALJ’s finding is not
16 supported by substantial evidence.

17 In 2017 Ms. Munoz opined Plaintiff’s ankylosing spondylitis made Plaintiff unable to sit,
18 stand, walk, lift, carry, handle, push, pull, reach, stoop, or crouch. Tr. 1822. It appears the ALJ
19 erroneously conflated this opinion with Dr. Mashburn’s 2017 opinion, which was part of the
20 same exhibit. *See* Tr. 1266 (ALJ stated Ms. Munoz based her opinion “more on the claimant’s
21 mental impairments”); Tr. 1822 (Ms. Munoz opined debilitating limitations based on ankylosing
22 spondylitis, attributing only difficulty communicating to bipolar depression). On remand, the
23 ALJ should properly address Ms. Munoz’s 2017 opinion.

1 In March 2019 Ms. Munoz opined Plaintiff's mental impairments would cause difficulty
2 more than 20 percent of the time in basic mental work activities such as maintaining
3 concentration. Tr. 1726. The ALJ discounted this opinion because in a contemporaneous
4 treatment note Plaintiff stated she was "doing very good." Tr. 1724. The treatment note did not,
5 however, address issues such as concentration and thus did not contradict Ms. Munoz's opinions.

6 In April 2019 Ms. Munoz opined Plaintiff's physical and mental impairments made her
7 unable to sustain work. Tr. 1813. The ALJ discounted these opinions based on Ms. Munoz's
8 own largely normal clinical findings. Tr. 1267. However, the opinions were based in part on
9 fibromyalgia, which lacks objective findings. *See Revels*, 874 F.3d at 663. The ALJ also
10 discounted the opinions because they were so extreme as to require Plaintiff to recline most of
11 the time, inconsistent with Plaintiff's activities. Tr. 1267. Ms. Munoz opined Plaintiff could
12 only stand/walk 15 minutes and sit 30 minutes total per day, yet also opined every 30 minutes
13 she would need to walk around for two minutes before being able to sit down and work again.
14 Tr. 1809. Either Ms. Munoz misunderstood the form or her opinions require reclining for all but
15 45 minutes per day. Either way, this was a germane reason to discount her opinion.

16 The ALJ erred by discounting Ms. Munoz's 2016, 2017, and March 2019 opinions, but
17 did not err by discounting her April 2019 opinions.

18 **C. Scope of Remand**

19 Plaintiff requests remand for an award of benefits because, if the improperly rejected
20 evidence were credited as true, Plaintiff must be found disabled. Dkt. 11 at 18. "This is an
21 erroneous reading of [Ninth Circuit] case law, which requires [the Court] to assess whether there
22 are outstanding issues requiring resolution *before* considering whether to hold that the
23 [improperly discredited evidence] is credible as a matter of law." *Treichler v. Comm'r of Soc.*

1 *Sec. Admin.*, 775 F.3d 1090, 1105 (9th Cir. 2014). As the Commissioner points out, evidentiary
2 conflicts requiring resolution remain. Dkt. 12 at 10. The ALJ gave significant weight to
3 examining and nonexamining doctors' opinions of nondisability, conflicting with Dr. Bone's, Dr.
4 Mashburn's, and Ms. Munoz's opinions. Tr. 1263-64. These are conflicts the ALJ, not this
5 Court, must resolve. The Court concludes remand for further proceedings is appropriate.

6 **CONCLUSION**

7 For the foregoing reasons, the Commissioner's decision is **REVERSED** and this case is
8 **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

9 On remand, the ALJ shall reevaluate Plaintiff's testimony and the opinions of Dr. Bone,
10 Dr. Mashburn, and Ms. Munoz; develop the record and reassess the RFC as appropriate; and
11 proceed to step five as needed.

12 DATED this 23rd day of April, 2020.

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BRIAN A. TSUCHIDA
Chief United States Magistrate Judge